

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MONTGOMERY CARL AKERS,

Plaintiff,

vs.

JAMES KESZEI, *et al.*,

Defendants.

Case No. 2:07-cv-00572-JCM-GWF

**ORDER AND FINDINGS  
AND RECOMMENDATIONS**

This matter is before the Court on Plaintiff Montgomery Carl Akers' Motion for Order of Sanctions Against Defendant Nicholas Voulgaris for Not Complying with the Court's Order Compelling Discovery (Dkt. #220) by December 21, 2009 and Judgment on the Pleadings in Complaint (Dkt. #239), filed January 6, 2010; Plaintiff's Reply to Response to Order by Defendant Nicholas Voulgaris (Dkt. #242), filed January 11, 2010; and Plaintiff's Addendum to Motion to Strike the Answer of Defendant Nicholas Voulgaris and for Judgment on the Pleadings for Defendant Voulgaris Not Complying with the Order of the Court to Produce Substantive Discovery Documents (Dkt. #243), filed January 11, 2010.

**DISCUSSION**

**1. Motion for Sanctions**

The Court will deny Plaintiff's motion for sanctions as Plaintiff has not demonstrated that Defendant Nicholas Voulgaris has not complied with court orders to respond to Plaintiff's discovery requests.

1 In the present motion, Plaintiff requests that this Court issue sanctions against Defendant  
2 Nicholas Voulgaris due to Voulgaris' refusal to respond to repeated discovery requests from Plaintiff  
3 and two court orders to produce discovery. (Dkt. #239). However, in Reply to Response to Order by  
4 Nicholas Voulgaris (Dkt. #242 at 2) and his Addendum to Motion to Strike the Answer of Defendant  
5 (Dkt. #243 at 2-3), Plaintiff states that Defendant Voulgaris has responded to Plaintiff's discovery  
6 requests by stating in an affidavit that Defendant is not in possession or control of any documents  
7 related to Plaintiff's discovery requests. Plaintiff argues that such a response does not comply with the  
8 Court's order to produce documents as Plaintiff is sure that Defendant Voulgaris is in possession of the  
9 requested documents. (Dkt. #243 at 3-4). The Court finds Plaintiff has not offered sufficient evidence  
10 to demonstrate that Defendant Voulgaris has not adequately responded to Plaintiff's discovery requests.  
11 Therefore, the Court will deny Plaintiff's motion for sanctions.

## 12 **2. Motion for Judgment on the Pleadings**

13 "After the pleadings are closed-but early enough not to delay trial-a party may move for  
14 judgment on the pleadings." Fed.R.Civ.P. 12(c). In reviewing a motion for judgment on the pleadings,  
15 the court "must accept all factual allegations in the complaint as true and construe them in the light  
16 most favorable to the non-moving party." *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) (citing  
17 *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004)). "Judgment on the pleadings is properly granted  
18 when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a  
19 matter of law." *Id.* (citing *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 978 (9th Cir.1999)).

20 Plaintiff's Complaint alleges that Defendant Voulgaris violated his rights under the due process  
21 clause of the Fourteenth Amendment by taking Plaintiff's property and engaging in alleged libelous and  
22 slanderous acts. (Dkt. #4 at 6). In his Answer, Defendant Voulgaris denies all allegations stated  
23 against him in Plaintiff's Complaint. (Dkt. #87). As Defendant has denied the allegations contained in  
24 Plaintiff's Complaint, the Court finds that issues of material facts remain in dispute. Accordingly,

25 **IT IS HEREBY ORDERED** that Plaintiff Montgomery Carl Akers' Motion for Order of  
26 Sanctions Against Defendant Nicholas Voulgaris for Not Complying with the Court's Order  
27 Compelling Discovery (Dkt. #220) By December 21, 2009 and Judgment on the Pleadings in Complaint  
28 (Dkt. #239) is **denied**.

1       **IT IS FURTHER ORDERED** that the Clerk of the Court shall serve a copy of this Findings  
2 and Recommendations to Defendant Nicholas Voulgaris at the address provided in the court docket.

3                               **RECOMMENDATION**

4       **IT IS HEREBY RECOMMENDED** that Plaintiff's Motion for Judgment on the Pleadings be  
5 **denied.**

6                               **NOTICE**

7       Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in  
8 writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the  
9 courts of appeal may determine that an appeal has been waived due to the failure to file objections  
10 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)  
11 failure to file objections within the specified time and (2) failure to properly address and brief the  
12 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues  
13 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*  
14 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

15       DATED this 16th day of February, 2010.

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19                               **GEORGE FOLEY, JR.**  
20                               **United States Magistrate Judge**  
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